

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2006-1727-PST-E TCEQ ID: RN102532801 CASE NO.: 31319**  
**RESPONDENT NAME: ALMEDA, INC. DBA DOWNTOWN TIGER MART**

Page 1 of 3

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 2111 Fannin Street, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Convenience Store with retail sale of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is one other enforcement action pending for this facility location (2008-1875-PST-E).</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 6, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="margin-left: 20px;"><b>TCEQ Attorney:</b> Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577</p> <p style="margin-left: 20px;"><b>TCEQ Regional Contact:</b> Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623</p> <p style="margin-left: 20px;"><b>Respondent:</b> Mr. Sadruddin Mohd, President, Almeda, Inc., 2111 Fannin, Houston, Texas 77002</p> <p style="margin-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None.</p> <p><b>Date of Investigation Relating to this Case:</b> September 7, 2006</p> <p><b>Date of NOE Relating to this Case:</b> September 14, 2006</p> <p><b>Background Facts:</b> The EDPRP was filed on May 18, 2007 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. On November 17, 2008, Notice of Intent to Shut Down letter was mailed to the Respondent. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Respondent is not yet in compliance with release detection requirements. The Respondent's Delivery Certificate expires in June 2009.</p> <p><b>PST:</b></p> <p>1. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>2. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX WATER CODE § 26.3475(c)(1)].</p> <p>3. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX WATER CODE § 26.3475(c)(1)].</p>	<p><b>Total Assessed:</b> \$55,080</p> <p><b>Total Deferred:</b> \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$55,080</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent implemented the following corrective actions at the Facility:</p> <ol style="list-style-type: none"> <li>Submitted documentation to the TCEQ demonstrating that acceptable financial assurance was obtained on September 15, 2006;</li> <li>Began conducting inventory control procedures on September 15, 2006; and</li> <li>Submitted a completed UST registration and self-certification form and obtained a TCEQ delivery certificate on September 7, 2006.</li> </ol> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, shut down operations of the non-compliant UST systems: <ol style="list-style-type: none"> <li>Cease dispensing fuel from the USTs;</li> <li>Cease receiving deliveries of regulated substances into the USTs;</li> <li>Padlock the dispensers;</li> <li>Empty the USTs of all regulated substances; and</li> <li>Temporarily remove the UST system from service.</li> </ol> </li> <li>The Respondent's UST delivery certificate is revoked immediately. The Respondent may submit an application for a new delivery certificate only after the Respondent has complied with all requirements.</li> <li>Within 10 days, send its UST delivery certificate to the TCEQ.</li> <li>Within 15 days, submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3.</li> <li>If the Respondent elects to permanently remove from service any UST systems at the Facility, shall permanently remove those USTs, and shall submit to the Commission a written report documenting compliance.</li> <li>Prior to resuming retail sales of gasoline, implement a release detection method for all USTs at the Facility.</li> <li>Prior to receiving gasoline deliveries: <ol style="list-style-type: none"> <li>obtain a delivery certificate; and</li> </ol> </li> </ol>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>5. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)].</p> <p>6. Failed to make available to a common carrier a valid, current, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the Facility [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX WATER CODE § 26.3467(a)].</p>		<p>b. post the delivery certificate in a location where the document is clearly visible at all times.</p> <p>8. Within 10 days of resuming service of the USTs, submit written certification to demonstrate compliance with Ordering Provision Nos. 6 and 7.</p>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	18-Sep-2006	Screening	25-Sep-2006	EPA Due	
	PCW	14-Feb-2007				

## RESPONDENT/FACILITY INFORMATION

Respondent	Alameda, Inc. dba Downtown Tiger Mart		
Reg. Ent. Ref. No.	RN102532801		
Facility/Site Region	12-Houston	Major/Minor Source	Major Source

## CASE INFORMATION

Enf./Case ID No.	31319	No. of Violations	5
Docket No.	2006-1727-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Jason Godeaux
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$54,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	2% Enhancement	Subtotals 2, 3, & 7	\$1,080
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Notes	Enhancement for one NOV without same or similar violation.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes	The respondent does not meet the good faith criteria.
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Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2,117	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$4,050	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$55,080
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes	
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Final Penalty Amount	\$55,080
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$55,080
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	This is not an expedited case.
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PAYABLE PENALTY	\$55,080
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<b>Screening Date</b> 25-Sep-2006	<b>Docket No.</b> 2006-1727-PST-E	<b>PCW</b>
<b>Respondent</b> Alameda, Inc. dba Downtown Tiger Mart	<b>Policy Revision 2 (September 2002)</b>	
<b>Case ID No.</b> 31319	<b>PCW Revision May 19, 2005</b>	
<b>Reg. Ent. Reference No.</b> RN102532801		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Jason Godeaux		

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 2%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for one NOV without same or similar violation.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 2%

<b>Screening Date</b> 25-Sep-2006		<b>Docket No.</b> 2006-1727-PST-E		<b>PCW</b>	
<b>Respondent</b> Alameda, Inc. dba Downtown Tiger Mart				<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 31319				<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102532801					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Jason Godeaux					
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px;">1</div>			
<b>Primary Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 37.815(a) and (b)</div>			
<b>Secondary Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px;"></div>			
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 2px;">Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.</div>			
<b>Base Penalty</b>					<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

**>> Environmental, Property and Human Health Matrix**

		<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<b>OR</b>	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px; text-align: center;">X</div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">25%</div>

**Matrix Notes**

100% of the rule requirement was not met.

**Adjustment**

-\$7,500

**Base Penalty Subtotal**

\$2,500

**Violation Events**

**Number of Violation Events**

3

mark only one use a small x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; padding: 2px;">\$7,500</div>
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	single event	<div style="border: 1px solid black; width: 50px; height: 15px; text-align: center;">X</div>	

Three single events are recommended for the three USTs.

<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	<div style="border: 1px solid black; padding: 2px;">\$2,048</div>	<b>Violation Final Penalty Total</b>	<div style="border: 1px solid black; padding: 2px;">\$7,650</div>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	<div style="border: 1px solid black; padding: 2px;">\$7,650</div>

**Economic Benefit Worksheet**

Respondent: Almeda, Inc. dba Downtown Tiger Mart

Case ID No: 31319

Reg. Ent. Reference No: RN102532801

Media [Statute]: Petroleum Storage Tank

Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1]: avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	07-Sep-2005	07-Sep-2006	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum UST's (at \$650 per tank) for the twelve month period preceding the date of the investigation.

Approx. Cost of Compliance **\$1,950****TOTAL** **\$2,048**

<b>Screening Date</b> 25-Sep-2006	<b>Docket No.</b> 2006-1727-PST-E	<b>PCW</b>
<b>Respondent</b> Almeda, Inc. dba Downtown Tiger Mart	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 31319	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN102532801		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Jason Godeaux		
<b>Violation Number</b> 2		
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A) and 334.50(d)(1)(B)(iii)(I)	
<b>Secondary Rule Cite(s)</b>	Tex. Water Code § 26.3475(c)(1)	
<b>Violation Description</b>	Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.	
<b>Base Penalty</b>		\$10,000

**>> Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				<b>Percent</b> 50%
	Potential	X			

**>> Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
						<b>Percent</b>

**Matrix Notes** Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** -\$5,000

<b>Base Penalty Subtotal</b>	\$5,000
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**Violation Events**

**Number of Violation Events** 1

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$5,000

One monthly event is recommended from the September 7, 2006 investigation date to the September 25, 2006 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> \$68	<b>Violation Final Penalty Total</b> \$5,100
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$5,100	



**Economic Benefit Worksheet**

Respondent: Alameda, Inc. dba Downtown Tiger Mart  
 Case ID No: 31319  
 Reg. Ent. Reference No: RN102532801  
 Media (Statute): Petroleum Storage Tank  
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,500	07-Sep-2006	01-May-2007	0.6	\$3	\$65	\$68
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. Date required is the date of investigation. Final date is the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs).

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$1,500****TOTAL** **\$68**

<b>Screening Date</b>	25-Sep-2006	<b>Docket No.</b>	2006-1727-PST-E	<b>PCW</b>
<b>Respondent</b>	Alameda, Inc. dba Downtown Tiger Mart			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	31319			<i>PCW Revision May 19, 2005</i>
<b>Reg. Ent. Reference No.</b>	RN102532801			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Jason Godeaux			
<b>Violation Number</b>	<input type="text" value="3"/>			
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.48(c)"/>			
<b>Secondary Rule Cite(s)</b>	<input type="text"/>			
<b>Violation Description</b>	Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.			
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>

>> **Environmental, Property and Human Health Matrix**

OR	<b>Harm</b>				<b>Percent</b> <input type="text" value="50%"/>
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				

**Adjustment** **Base Penalty Subtotal** **Violation Events****Number of Violation Events** 

mark only one use a small x	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty** 

One monthly event is recommended from the September 7, 2006 investigation date to the September 15, 2006 compliance date.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** **Violation Final Penalty Total** **This violation Final Assessed Penalty (adjusted for limits)**

**Economic Benefit Worksheet**

Respondent: Almeda, Inc. dba Downtown Tiger Mart  
 Case ID No: 31319  
 Reg. Ent. Reference No: RN102532801  
 Media [Statute]: Petroleum Storage Tank  
 Violation No: 3

Percent Interest	Years of Depreciation
5.0	15

Item	Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description:	No commas or \$						

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	07-Sep-2006	15-Sep-2006	0.0	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs. Date Required is the investigation date. Final Date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$1

<b>Screening Date</b>	25-Sep-2006	<b>Docket No.</b>	2006-1727-PST-E	<b>PCW</b>
<b>Respondent</b>	Alameda, Inc. dba Downtown Tiger Mart			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	31319			<i>PCW Revision May 19, 2005</i>
<b>Reg. Ent. Reference No.</b>	RN102532801			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Jason Godeaux			
<b>Violation Number</b>	<input type="text" value="4"/>			
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.8(c)(5)(B)(ii)"/>			
<b>Secondary Rule Cite(s)</b>				
<b>Violation Description</b>	<p>Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on June 30, 2006.</p>			
<b>Base Penalty</b>	<input type="text" value="\$10,000"/>			

>> **Environmental, Property and Human Health Matrix**

		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>

<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>
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**Adjustment** **Base Penalty Subtotal** **Violation Events****Number of Violation Events** 

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty** 

One single event is recommended based on documentation of the violation during the September 7, 2006 investigation date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$1"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,550"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,550"/>	

**Economic Benefit Worksheet**

Respondent: Alameda, Inc. dba Downtown Tiger Mart  
 Case ID No: 31319  
 Reg. Ent. Reference No: RN102532801  
 Media (Statute): Petroleum Storage Tank  
 Violation No: 4

Percent Interest	Years of Depreciation
5.0	15

Item	Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	01-Jun-2006	07-Sep-2006	0.3	\$1	n/a	\$1

Notes for DELAYED costs: Estimated cost to prepare and submit the UST registration & self-certification form. Date Required is 30 days prior to the expiration date of the delivery certificate and the Final Date is the date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$1

<b>Screening Date</b> 25-Sep-2006		<b>Docket No.</b> 2006-1727-PST-E		<b>PCW</b>
<b>Respondent</b> Almeda, Inc. dba Downtown Tiger Mart		<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 31319		<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b> RN102532801				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Jason Godeaux				
<b>Violation Number</b> 5				
<b>Primary Rule Cite(s)</b> 30 Tex. Admin. Code § 334.8(c)(5)(A)(i)				
<b>Secondary Rule Cite(s)</b> Tex. Water Code § 26.3467(a)				
<b>Violation Description</b>		Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the Facility. Specifically, the respondent accepted a total of 34 fuel deliveries without a delivery certificate.		
<b>Base Penalty</b>				\$10,000

**>> Environmental, Property and Human Health Matrix**

		<b>Harm</b>			
		Major	Moderate	Minor	
OR	<b>Release</b>				
	Actual				
	Potential			X	<b>Percent</b> 10%

**>> Programmatic Matrix**

		Major	Moderate	Minor	
					<b>Percent</b>
Matrix Notes	<b>Falsification</b>				

Failure to make available a valid, current TCEQ delivery certificate to a common carrier before accepting a delivery of regulated substance into the USTs could result in the release of insignificant amounts of pollutants that would not exceed levels that are protective of human health or the environment.

**Adjustment** -\$9,000

**Base Penalty Subtotal** \$1,000

**Violation Events**

**Number of Violation Events** 34

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

**Violation Base Penalty** \$34,000

Thirty-Four single events are recommended (one per fuel drop) based on documentation of the violation during the September 7, 2006 investigation date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> \$0	<b>Violation Final Penalty Total</b> \$34,680
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$34,680	

**Economic Benefit Worksheet**

Respondent: Alameda, Inc. dba Downtown Tiger Mart  
 Case ID No: 31319  
 Reg. Ent. Reference No: RN102532801  
 Media (Statute): Petroleum Storage Tank  
 Violation No: 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in Violation No. 4

<b>Avoided Costs</b>							
ANNUALIZE (1) avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

TOTAL \$0

# Compliance History

Customer/Respondent/Owner-Operator:	CN802805673	Almeda, Inc.	Classification: AVERAGE	Rating: 3.67
Regulated Entity:	RN102532801	DOWNTOWN TIGER MART	Classification: AVERAGE	Site Rating: 3.67
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	70523	
Location:	2111 FANNIN ST, HOUSTON, TX, 77002	Rating Date: 9/1/2006	Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 02, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 02, 2001 to October 02, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jason Godeaux Phone: 512-239-2541

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? Almeda, Inc.
4. If Yes, who was/were the prior owner(s)? Eastern Trust, Ltd
5. When did the change(s) in ownership occur? 03/16/2005

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 01/08/2003 (19727)
  - 2 10/25/2005 (431968)
  - 3 09/14/2006 (512521)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 10/25/2005 (431968)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)

Description: 30 TAC §115.246 (6) - Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: 30 TAC §115.246 (5) - Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: 30 TAC §115.244 (3) - Failure to conduct a monthly inspection of the components listed in 115.242(3)(J). These components include: any pressure/vacuum relief valves, vapor check valves and Stage I dry breaks.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: 30 TAC §115.246(1) - Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II Vapor Recovery system and any related components installed at the facility.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)



Description:

Failure to maintain all components of the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN</b>	§	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	§	
<b>CONCERNING</b>	§	<b>TEXAS COMMISSION ON</b>
<b>ALMEDA, INC. DBA DOWNTOWN</b>	§	
<b>TIGER MART;</b>	§	<b>ENVIRONMENTAL QUALITY</b>
<b>RN102532801</b>	§	

## **DEFAULT AND SHUTDOWN ORDER DOCKET NO. 2006-1727-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Almeda, Inc. dba Downtown Tiger Mart ("Almeda, Inc."), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the Downtown Tiger Mart facility, located at 2111 Fannin Street in Houston, Harris County, Texas.

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Almeda, Inc. owns and operates a convenience store with retail sales of gasoline, located at 2111 Fannin Street in Houston, Harris County, Texas (the "Facility").
2. Almeda, Inc.'s three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Almeda, Inc.'s USTs contain a regulated substance as defined in the rules of the Commission.
3. On September 7, 2006, an investigator from the TCEQ Houston Regional Office documented that Almeda, Inc.:
  - a. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

- b. Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring).
  - c. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
  - d. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel.
  - e. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on June 30, 2006.
  - f. Failed to make available to a common carrier a valid, current, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the Facility. Specifically, Almeda, Inc. accepted a total of 34 fuel deliveries without a delivery certificate.
4. By letter dated September 14, 2006, the TCEQ Houston Regional Office provided Almeda, Inc. with notice of the violations and the TCEQ's authority to shut down and remove from service UST systems not in compliance with UST system release detection requirements if the violations were not corrected.
5. Almeda, Inc. received notice of the violations on or about September 19, 2006.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Almeda, Inc. dba Downtown Tiger Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on May 18, 2007.
7. By letter dated May 18, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Almeda, Inc. with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Almeda, Inc. received notice of the EDPRP.

8. More than 20 days have elapsed since Almeda, Inc. received notice of the EDPRP, provided by the Executive Director. Almeda, Inc. failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. By letter dated November 17, 2008, TCEQ provided Almeda, Inc. with notice of TCEQ's intent to order the UST systems at the Facility shut down and removed from service if Almeda, Inc. failed to correct the release detection violations within 30 days after Almeda, Inc.'s receipt of the notice.
10. As of the date of entry of this Order, Almeda, Inc. has implemented the following corrective measures at the Facility:
  - a. Submitted documentation to the TCEQ demonstrating that acceptable financial assurance was obtained on September 15, 2006;
  - b. Began conducting inventory control procedures on September 15, 2006; and
  - c. Submitted a completed UST registration and self-certification form and obtained a TCEQ delivery certificate on September 7, 2006.
11. The UST systems at the Facility do not have tank release detection equipment as required by 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A) and (d)(1)(B)(iii)(I) and TEX WATER CODE § 26.3475(c)(1) and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

#### CONCLUSIONS OF LAW

1. Almeda, Inc.'s USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., Almeda, Inc. failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
3. As evidenced by Finding of Fact Number 3.b., Almeda, Inc. failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX WATER CODE § 26.3475(c)(1).

4. As evidenced by Finding of Fact Number 3.c., Almeda, Inc. failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX WATER CODE § 26.3475(c)(1).
5. As evidenced by Finding of Fact Number 3.d., Almeda, Inc. failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
6. As evidenced by Finding of Fact Number 3.e., Almeda, Inc. failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii).
7. As evidenced by Finding of Fact Number 3.f., Almeda, Inc. failed to make available to a common carrier a valid, current, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the Facility, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX WATER CODE § 26.3467(a).
8. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Almeda, Inc. with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
9. As evidenced by Finding of Fact No. 8, Almeda, Inc. has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Almeda, Inc. and assess the penalty recommended by the Executive Director.
10. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Almeda, Inc. for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
11. An administrative penalty in the amount of fifty-five thousand eighty dollars (\$55,080.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
12. As evidenced by Finding of Fact Nos. 3, 4, 5, 9 and 11, Almeda, Inc. failed to correct documented violations of Commission requirements within 30 days after Almeda, Inc.

received notice of the violations and notice of the Executive Director's intent to shut down the Facility.

13. TEX. WATER CODE § 26.3475(e) authorizes the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, and/or corrosion protection for tanks and piping.
14. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
15. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Almeda, Inc.'s UST delivery certificate if the Commission finds that good cause exists.
16. Good cause for revocation of Almeda, Inc.'s UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 9, and Conclusions of Law Nos. 2 through 9 and 12.
17. As evidenced by Finding of Fact Number 11, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

#### **ORDERING PROVISIONS**

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Almeda, Inc. shall take the following steps to shut down operations of the non-compliant UST systems at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. Almeda, Inc.'s UST delivery certificate is revoked immediately upon the effective date of this Order. Almeda, Inc. may submit an application for a new delivery certificate only after Almeda, Inc. has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Almeda, Inc. shall send its UST delivery certificate to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. Within 15 days after the effective date of this Order, Almeda, Inc. shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e., and 3. Almeda, Inc. shall submit the report to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

5. If Almeda, Inc. elects to permanently remove from service any UST systems at the Facility, Almeda, Inc. shall permanently remove those UST systems in accordance with 30 TEX. ADMIN. CODE § 334.55, and shall within 15 days after the effective date of this Order submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Almeda, Inc. shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

6. Almeda, Inc. is assessed an administrative penalty in the amount of fifty-five thousand eighty dollars (\$55,080.00) for violations under TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Almeda, Inc.'s compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Almeda, Inc. dba Downtown Tiger Mart; Docket No. 2006-1727-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

7. Almeda, Inc.'s UST systems shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Almeda, Inc. demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.b. and 3.c. and Conclusion of Law Nos. 3 and 4 as listed herein.
8. Prior to resuming retail sales of gasoline, Almeda, Inc. shall implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50, and
9. Prior to receiving gasoline deliveries, Almeda, Inc. shall:
  - a. obtain a delivery certificate; and
  - b. shall post the delivery certificate in a location where the documents is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
10. Within 10 days of resuming service of the USTs, Almeda, Inc. shall submit written certification as described below, and include detailed supporting documentation including



photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8 and 9. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and, that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Almeda, Inc., and Almeda, Inc. is ordered to give notice of this Order to personnel who maintain day to day control of the UST systems at the Facility.
13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Almeda, Inc. if the Executive Director determines that Almeda, Inc. is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
14. This Order shall terminate five years from its effective date or when Almeda, Inc. demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.

15. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

"My name is Jacquelyn Boutwell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.


On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Almeda, Inc. dba Downtown Tiger Mart" (the "EDPRP") was filed with the Office of the Chief Clerk on May 18, 2007.

The EDPRP was mailed to Almeda, Inc. at its last known address on May 18, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Almeda, Inc. received notice of the EDPRP.

More than 20 days have elapsed since Almeda, Inc. received notice of the EDPRP. Almeda, Inc. failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

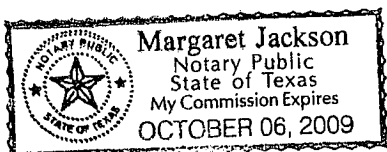
By letter dated November 17, 2008, I provided Almeda, Inc. with notice of the TCEQ's intent to order the UST systems at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Almeda, Inc.'s receipt of the letter.

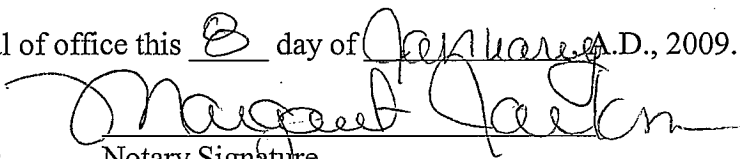
As of the date of this affidavit, I am not aware of any evidence that indicates that Almeda, Inc. has corrected the violations noted during the September 7, 2006, investigation."

  
\_\_\_\_\_  
Jacquelyn Boutwell, Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 8 day of January, A.D., 2009.



  
\_\_\_\_\_  
Notary Signature